

## **REMARKS**

In the Official Action mailed on **25 June 2007**, the Examiner reviewed claims 1-2, 4-10, and 12-16. Claims 1-2, 4-10, and 12-16 were rejected under 35 U.S.C. §112 as being indefinite. Claims 1-2, 4-10, and 12-16 were rejected under 35 U.S.C. §103(a) based on Beck et al (USPub 2002/0049963, hereinafter “Beck”), in view of Almy et al (USPN 6,609,216, hereinafter “Almy”), and further in view of Hall (USPN 5,828,883, hereinafter “Hall”). The specification is objected to.

### **Specification**

The specification is objected to because of informality. In particular, in page 1, “to be assigned” need to be replaced with actual information and page 4 contains a hyperlink.

Accordingly, Applicant has amended to specification to include actual information regarding the related patent application and remove the hyperlink. No new matter has been added.

### **Rejections under 35 U.S.C. §112**

Claims 1, 2, 4-10, and 12-26 were rejected under 35 U.S.C. §112 as being indefinite.

Accordingly, Applicant has amended claim 1 and 9 to clarify the claim language.

### **Rejections under 35 U.S.C. §103(a)**

Claims 1, 2, 4-10, and 12-26 were rejected as being unpatentable over Beck, in view of Almy, further in view of Hall. Applicant respectfully disagrees because Beck, Almy and Hall do not teach calibrating the execution time of the instrumentation code in isolation.

Almy discloses using a test case program and a driver to set up a sequence of instructions to be measured (see col. 2, ll. 12-17 of Almy). In particular, Almy teaches away from using instrumentation code by stating, “*The instrumentation approach requires...a stand alone run...result in large errors...*” (see col. 1, ll. 20-27 of Almy). Instead of measuring the instrumentation code execution time in isolation, the Almy system measures the execution time for the test case program including a number of test points (see col. 3, ll. 36-59 of Almy).

Hull discloses a method for measuring the usage of a focus resource by a target program. Examiner referenced Hull col. 6, ll. 55-67, and states that the overhead ticks is available for subtraction shows that overhead ticks is measured independently by measuring the calls to the clock, which is the profiling instrumentation code. However, the overhead clock ticks as measured in Hull are not associated with an instrumentation code, and the instrumentation code is more than a simple call to the clock (see Fig. 4 of the instant application). Although Beck discloses a method for instrumenting object oriented software, Beck does not suggest **time measurement**, especially that of the instrumentation code (see abstract and summary ([0007]-[0011]) of Beck). Note that “The mere fact that references can be combined or modified does not render the result combination obvious unless the prior art also suggested the desirability of the combination.” (see MPEP §2143.01.III).

In addition, Hull fails to disclose how to obtain the overhead clock ticks. In contrast, embodiments of the current invention involve measuring time required to execute instrumentation code **in isolation, through a calibration procedure** (see [0009], [0084] and Fig. 5 of the instant application). The calibration procedure involves executing the instrumentation code for a large number of times and measuring the average execution time periodically (see [0084] of the instant application). By calibrating the instrumentation code in isolation beforehand, one can obtain the exact time for target application method (see [0082]-[0084] of the instant application).

There is nothing in Beck, Almy and Hull that teaches calibrating the executing time of the instrumentation code in isolation.

Accordingly, Applicant has amended claims 1 and 9 to clarify that the method measures the time required to execute instrumentation code in isolation through a calibration procedure and the calibration procedure involves executing the instrumentation code for a number of times. These amendments find support in [0009] and [0084] of the instant application. No new matter has been added.

Hence, Applicant respectfully submits that independent claims 1 and 9 as presently amended are in condition for allowance. Applicant also submits that claims 2 and 4-8, which depend upon claim 1, and claims 10 and 12-16, which depend upon claim 9, are for the same reasons in condition for allowance and for reasons of the unique combinations recited in such claims.

**CONCLUSION**

It is submitted that the present application is presently in form for allowance. Such action is respectfully requested.

Respectfully submitted,

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